

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
SPENCER BROOKS BLEDSOE, JR.) CASE NO. 04-66255 JPK
KATHRYN BLEDSOE,) Chapter 13
)
Debtors.)

ORDER DENYING MOTION TO VACATE ORDER OF
APRIL 21, 2005 ABANDONING REAL ESTATE AND
GRANTING STAY RELIEF

On September 27, 2005, the debtors, by counsel, filed a motion designated as "Motion to Vacate Order of April 21, 2005 Abandoning Real Estate and Granting Stay Relief" ("Motion").

This motion is essentially *deja vu* all over again. The sequence of events are these. This case was initiated on December 16, 2004 as a Chapter 7 case. On March 29, 2005, creditor CitiMortgage, Inc. filed a motion for relief from stay/abandonment with respect to property at 3563 West 20th Avenue, Gary, Indiana, and noticed that motion correctly pursuant to the procedures required by N.D.Ind.L.B.R. B-2002-2(a)(4)/(17). The debtors and the debtors' counsel were served with this motion, and with the required notice, and no response was made. On April 21, 2005, the Court entered an order granting the creditor's motion; the result of that order was that the subject property was abandoned from the debtors' bankruptcy estate, and the creditor was granted relief from the stay to pursue *in rem* remedies with respect to that property. The debtors filed a motion to convert their Chapter 7 case to a case under Chapter 13, which was granted by the Court's order entered on June 7, 2005. On July 21, 2005 – three months after the Court's order granting stay relief/abandonment to CitiMortgage and nearly two and one-half months after the debtors' motion to convert their case to Chapter 13 – the debtors filed a "Motion to Reinstate Automatic Stay", which was denied by the Court's order of August 25, 2005 for the reasons stated in that order, principally that the Court's order of April 21, 2005 had removed the subject property from the bankruptcy estate and therefore the automatic stay

of 11 U.S.C. § 362(a) did not apply to *in rem* actions taken by the creditor with respect to that property. That order also noted that the July 21, 2005 motion filed by the debtors did not request any relief with respect to the April 21, 2005 order.

On September 27, 2005 – now over five months after the entry of the order to which the debtors direct the Court's attention – the debtors filed the Motion designated in the title of this order. That Motion asserts that the April 21, 2005 order should be vacated essentially because the debtors converted their case to a Chapter 13, filed a Chapter 13 plan which proposed to cure the arrearage owed to CitiMortgage and to maintain current payments on that mortgage, and in the next to last paragraph states:

The creditors [sic] motion for stay relief and for abandonment was in the conjunctive and not disjunctive and hence debtors [sic] failure to specifically address a [sic] abandonment was inadvertent and excusable neglect.

The debtors are apparently proceeding with respect to their September 27, 2005 Motion under Fed.R.Bankr.P. 9024/Fed.R.Civ.P. 60(b)(1), which provides that an order may be set aside on the grounds of "mistake, inadvertence, surprise, or excusable neglect". However, a motion made under this provision must also establish that the movant has a reasonable possibility of success on the merits of the action with respect to which the order sought to be set aside was entered. The debtors' Motion appears to state that no objection was lodged against CitiMortgage's March 25, 2005 motion because the debtors believed the motion sought only stay relief and did not in addition seek abandonment. Putting aside the fact that the title of the motion itself stated that it was directed to both relief from the stay and to abandonment, because the subject property was then in a Chapter 7 bankruptcy, the only valid objection that the debtors could have lodged was that the subject property had equity available for administration in the Chapter 7 case for the benefit of the debtors' creditors – in other words, a potential realizable sales value for the Chapter 7 Trustee in excess of real estate taxes, CitiMortgage's debt balance, closing expenses and the debtors' allowable exemption. Absent

that assertions, the debtors had nothing to say about the motion for abandonment/relief from stay, and thus absent that assertion the debtors had no valid defense to the motion.

The Court finds that the debtors' Motion filed on September 27, 2005 as a matter of law fails to state grounds sufficient to raise a *prima facie* basis under Fed.R.Bankr.P. 9024/ Fed.R.Civ.P. 60(b)(1) to set aside the order entered on April 21, 2005. This finding is particularly emphasized by paragraph 6 of the debtors' September 27, 2005 Motion, which states that CitiMortgage acted in reliance on the Court's April 21, 2005 order.

IT IS ORDERED that the debtors' above-designated Motion filed on September 27, 2005 is denied.

IT IS FURTHER ORDERED that a hearing will be held on **December 12, 2005, at 1:00 P.M.** to determine action necessary to reconcile the order entered on August 24, 2005 confirming the debtors' Chapter 13 plan with the sequence of events outlined above which abandoned real property located at 3562 West 20th Avenue, Gary, Indiana irrevocably from the debtors' bankruptcy estate.

Dated at Hammond, Indiana on November 4, 2005.

/s/ J. Philip Klingeberger
J. Philip Klingeberger
United States Bankruptcy Court

Distribution:
Debtors, Attorney for Debtors
Trustee, US Trustee
James Chiu, Esq.